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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: JAN 13 2012 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a [redacted] (UNR). The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel for the petitioner submits a brief and new witness letters.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on May 27, 2010. In an accompanying letter, counsel asserted: "The current policies at the [redacted] prevent [the petitioner's] sponsorship for permanent residence by the [redacted] More specifically, counsel quoted [redacted] who stated that "labor certification was not possible due to the uncertainty regarding the state budget situation and possible changes in the structure of the [redacted] The AAO will consider the merits of the petitioner's waiver claim, but the situation, as described, does not speak to the petitioner's eligibility for the waiver. If anything, the "uncertainty" raises doubts about her continued ability to participate in specific [redacted] projects described in the record. The national interest waiver finding must rest on the merits of the

petitioner's individual claims, rather than on the employer's policies. The job offer requirement that Congress created would quickly become meaningless if employers could unilaterally exempt themselves from the process simply by announcing "policies" against complying with the process (while still seeking to employ immigrant workers).

With respect to the merits of the petitioner's work, counsel stated:

> [The petitioner's] work is in the emerging field of applied bioeconomics, with a specialization in animal health economics. Bioeconomists develop models to help explain what economic and other bio-physical factors may influence decision makers and how those decisions impact natural resources and agricultural production. Her skills as an applied researcher are in demand by international agencies such as the FAO (Food and Agriculture Organization of the United Nations). In addition she provides critical analysis for U.S. and foreign governments, international, federal and local agencies, other researchers, as well as the livestock industry. . . .
>
> Documents submitted with this petition will demonstrate the following major points:
>
> - [The petitioner] is engaged in groundbreaking work to help federal and state agencies understand what economic factors could motivate ranchers to better monitor and eradicate invasive species on federal and private lands that are contributing to massive and frequent wildfires. . . .
> - [The petitioner's] work was important in developing a novel approach to assessing risks of highly-pathogenic avian influenza transmission. "Value-chain approach" has been widely adopted by . . . FAO's field teams in countries affected by the disease.
> - [The petitioner's] work has influenced scientists nationally and internationally, and her contributions . . . make her a leading researcher in the emerging field of bioeconomics. . . . [The] programming models that she has developed can be applied in many livestock production systems throughout the world.
> - [The petitioner] plays a critical role in providing economic analysis and modeling expertise for the community-business matching (CBM) model. This model received national recognition from the University Economic Development Association.

Counsel asserted that the petitioner devotes about 50% of her research work to natural rangeland management, 30% to community economic development and 20% to contagious animal diseases.

To establish the impact of her published work, the petitioner submitted a printout identifying five published articles, and indicating that one article had earned two citations, and a second had earned three. The two cited articles are companion works that appeared back to back in the same issue of [redacted] May 2007. The petitioner also documented that [redacted] has an impact factor of 1.506 and a five-year impact factor of 1.896 (meaning

that an article from the journal would, on average, accumulate 1.506 citations within the first two years after publication, and 1.896 citations over five years). The petitioner's articles accumulated, respectively, two and three citations as of the May 2010 filing date, three years after the May 2010 publication date, slightly above the journal's impact factor. The petitioner did not submit copies of the citing articles, and therefore it is not clear how many (if any) of the citations were independent rather than self-citations by the petitioner and/or her co-authors.

Four witness letters accompanied the initial filing. [redacted] stated:

> I have known [the petitioner] for nearly a decade. I was a co-supervisor of her Ph.D. thesis . . . , employed her as a Research Assistant, and have co-authored two papers with her. . . . I have been greatly impressed with her abilities. She is highly motivated, a person of great integrity, and does outstanding research.
>
> There are relatively few excellent livestock economists in the world, but [the petitioner] is one of them. Indeed, I estimate that there are no more than 25 economists internationally that have the combination of skills and expertise in livestock economics that she has. . . .
>
> [The petitioner's] research combines economics, biology and epidemiology to achieve results of importance to US livestock disease policy. The research is state of the art in methodology and application. In her paper on [redacted] she incorporated a large number of state and control variables in a stochastic dynamic programming model of a livestock herd, and used parameters estimated from an external biologically-based animal model to simulate a profit maximizing solution that identified the importance of capital constraints on herd management in Kazakhstan during transition. She used similar techniques to identify optimal policies for the control of a potential US outbreak of foot and mouth disease, which is potentially the most economically damaging of all animal diseases. She then analyzed control programs for Highly Pathogenic Avian Influenza, a disease that threatens a world pandemic. Her work is widely published and recognized internationally. . . .
>
> [The petitioner] is a brilliant young scientist whose research contributes importantly to improving agricultural and resource economics, particularly as related to the control of animal disease. . . . She is becoming a leading researcher in animal health economics and her theoretical and methodological skills will also permit her to identify solutions to other important agricultural and environmental problems.

[redacted] described some of the petitioner's research and stated that she "identif[ied] optimal policies for the control of a potential US outbreak of foot and mouth disease," but did not claim that the responsible authorities have actually implemented those (unspecified) policies. The vague

assertion that her "work is . . . recognized internationally" does not establish the extent of that recognition.

[redacted] is also president of the [redacted] stated:

> I met [the petitioner] when I visited [redacted] where she was a Ph.D. candidate. Since then I interacted with her on several occasions. . . .
>
> In her doctoral research, she developed a state-of-the-art programming model of extensive livestock production to study why the abundant rangeland resources stopped being utilized in Kazakhstan following the collapse of the Soviet Union. [The petitioner] continues the line of research, improving and applying the model in search [of] efficient management policies of the Great Basin rangelands where invasive weeds threaten the productivity of the range and the value of the range ecosystem. [The petitioner] is also actively engaged in the research area of economics of animal diseases. The series of consulting assignments with [the] Food and Agriculture Organisation of the United Nations (FAO) on developing and implementing a research methodology against avian influenza in developing countries proves the international recognition of her expertise in animal health economics and international development.

[redacted] stated:

> [The petitioner] worked for me during 2006 to 2008 when she prepared a literature review and set of operational guidelines on the use of value chain analysis in avian influenza research and tested them in Indonesia and China. . . . [The petitioner's] work was important in developing a novel approach to assessing risks of avian influenza transmission using value chain that has been widely adopted by FAO's field teams in countries affected by the disease.

[redacted] discussed the petitioner's most recent work:

> [The petitioner] has worked with me in developing the Community Business Matching (CBM) model and developing business questionnaires for the model. Her work is especially important in that the CBM model was awarded national recognition by the University Economic Development Association and continues to receive funding [from] county governments, state governments, the U.S. Economic Development Administration, and the U.S. Department of Labor. [The petitioner's] research and modeling expertise are needed for further and future development of the CBM model as she is instrumental in the scientific contribution to the model's development.

> [The petitioner's] original scientific contributions also focus on bio-economic models that combine insights of animal and range science and economics, and developing applied research projects with the Food and Agricultural Organization of the United Nations (FAO) and other federal and international agencies. She has been an instrumental research partner in an on-going animal health project with the Republic of Georgia. [The petitioner's] excellence in bio-economic models made it possible for the [redacted] to undertake bio-economic modeling for the Republic of Georgia. Also, [the petitioner's] expertise will be much needed in further development of bio-economic modeling for the Republic of Georgia project.

The petitioner's initial submission contained no documentary evidence about the CBM. The petitioner submitted a copy of an FAO publication, *Highly Pathogenic Avian Influenza and beyond: FAO's response*, but it is not clear to what extent this publication reflects official implementation of the petitioner's work. The petitioner's name does not appear in the publication. The record also does not indicate to what extent the petitioner's work has slowed the spread of avian influenza.

On September 28, 2010 the director issued a request for evidence, instructing the petitioner to submit independent evidence of the impact of her past work. The director also noted that, while the petitioner had documented only five citations of her work, "the search engine Google Scholar reveals the same two articles were actually cited on a total of twenty-two (22) occasions," including four self-citations. The director stated: "This is a fine total, but is generally less than the amount needed to be granted a national interest waiver."

In response to the notice, counsel asserted: "It is not necessary to demonstrate that [the petitioner's] work has resulted in 'significant changes . . . ,' as suggested in the request for evidence. Rather, under the standard of Matter of New York State Department of Transportation . . . , the requirement is to show that the applicant has had 'some influence' on the field as a whole." Counsel, here, referred to the following passage from *NYSDOT*:

> The alien . . . clearly must have established, in some capacity, the ability to serve the national interest to a substantially greater extent than the majority of his or her colleagues. The Service here does not seek a quantified threshold of experience or education, but rather a past history of demonstrable achievement with some degree of influence on the field as a whole. . . . In all cases the petitioner must demonstrate specific prior achievements which establish the alien's ability to benefit the national interest.

Id. at 219 n.6. In context, the word "some" in the phrase "some degree of influence" does not simply mean "more than none at all." Counsel correctly observed that this influence need not take the form of major international recognition and impact. Still, it is also important to consider the nature of the petitioner's claimed influence. The petitioner's cited articles proposed "a dynamic, optimal disease control model for foot-and-mouth disease." In terms of the national interest, research into foot and mouth disease benefits the United States not by encouraging academic

discussion of different proposals, but by actually controlling a dangerous and costly disease. It is, therefore, one thing to show that other researchers have cited the petitioner's "dynamic, optimal disease control model"; it is quite another to show that this model is in use on a significant scale (rather than in confined experimental conditions) and is, thereby, actually controlling foot and mouth disease.

Counsel stated that "the primary audience for [the petitioner's] research is not academic agricultural economists. Rather, the major value and significance of her research is its application for policymakers." The petitioner's witnesses, however, are predominantly academic agricultural economists rather than policymakers, and therefore they are not in a position to attest, first-hand, to the realized (rather than potential) policy impact of the petitioner's work. Counsel noted the petitioner's "participation in important national conferences and development of working papers . . . for federal agencies . . . and for international organizations," but the existence of conference presentations and working papers does not imply that governments or international organizations have actually implemented the petitioner's recommendations as policy.

One new witness whose work does pertain to policy is [redacted]
Discussing the petitioner's work in the Republic of Georgia, [redacted] stated:

> [The petitioner's] technical expertise in economic and epidemiological modeling is instrumental in the development of a public and animal health policy tool that will be used by the Government of Georgia. . . .
>
> USDA is interested in continuing to collaborate with [the petitioner], because of her innovative approach that links economic models to animal health and biosecurity policy issues.
>
> I have come to know of [the petitioner's] research through the Georgia animal health program, which I manage. [The petitioner] is a Co-Principal Investigator on this project. I had the pleasure of working closely with [the petitioner] in Georgia and was impressed with her ability to explain complex models to non-expert government officials. I believe that her effectiveness at communicating USDA's objectives for the Cost-Benefit Analysis Model Development project enhanced USDA's partnership with the Government of Georgia. Her research team's ability to produce the high-quality model that the Government of Georgia expects in Spring 2011 is contingent on her continued involvement in the project.

The record contains no evidence from the Georgian government, and no statement from any official thereof, to clarify the nature or extent of the petitioner's work on its behalf.

Two additional [redacted] faculty members provided witness letters. [redacted], stated:

> [The petitioner] is an important part of our research group "Economics, Society and Natural Resources" (ESNR) . . . for which I am the group leader. . . . We conduct applied research to gain knowledge and understanding of how human economic activities may cause and/or arrest further degradation of the Great Basin ecosystem and what types of policy instruments may be appropriate to promote sustainable resource management practices. The output of our applied research is in most part geared towards regulatory decision makers who are in need [of] alternative approaches to intervention in order to restore and maintain the health of the ecosystem.

[redacted] asserted that the ESNR has "been successful in generating and leveraging research funds" and that the petitioner's "applied research is of interest to government policymakers," but did not identify any implemented policy initiatives that have arisen from the petitioner's work.

[redacted] stated that the petitioner's "expertise and education in [an ongoing] public land biosecurity study will be beneficial to the on-going viability of many rural Western states' economies." Like [redacted] asserted that "the nature of [the petitioner's] work is applied and often policy oriented," and that the petitioner's work "provides important information in designing policies," but the record contains no direct influence on the petitioner's existing (rather than anticipated or hypothetical) impact on agricultural policy.

The director denied the petition on December 7, 2010. The director acknowledged the intrinsic merit and national scope of the petitioner's occupation, and quoted from several witness letters. The director found, however, that the petitioner had not submitted sufficient evidence of the impact of her work.

On appeal, counsel protests that the director imposed too high a standard of evidence, and "discusses [the petitioner's] publications in academic journals to the exclusion of her important work with the FAO, USDA, and other important policy organizations." In a subsequent brief, counsel states: "It is important to recognize that [the petitioner's] applied research is directed primarily at policymakers." As such, it is necessary for the petitioner to demonstrate that her work has influenced policy and will continue to do so. Performing research funded by policymakers, and preparing reports for them, does not show that the policymakers have actually followed the recommendations presented. Development of a model does not prove wider implementation of that model.

Three more letters accompany the appeal. [redacted] stresses the importance of the petitioner's various projects and asserts that, due to her "specializations and experience," the petitioner is "uniquely positioned as a major contributor to [a] research and education program that impacts public policy and human health."

[redacted] is "the principal investigator and project coordinator" of a project with collaborators "in 5 western states with a goal to implement a comprehensive program to

effectively manage the serious invasive plant species, cheatgrass and medusahead." [redacted] states that the petitioner's work "will provide the needed documentation for land managers and policy makers to assess the benefits of vegetation management alternatives of these serious pests currently devastating extensive tracts of Great Basin ecosystems." [redacted] asserts that the petitioner's "stochastic dynamic programming model . . . has positively impacted our program strategies through our ability to ascertain life-long profitability of ranches with and without weeds," but does not elaborate or provide corroborating evidence.

[redacted], stated:

> I have become a leader of the Nevada Pinyon-Juniper Partnership, a collaborative effort that seeks to bring into balance pinyon-juniper woodlands and the sagebrush ecosystem they border, and to leverage opportunities for utilization of the biomass that will result from landscape scale treatments of these ecosystems.
>
> It is in doing this work that I have recently become aware of [the petitioner] and her essential applied research in the economic costs and benefits of ecological decisions regarding natural resource management. [The petitioner's] work is essential because she is documenting what I refer to as 'averted costs' and 'payments for ecosystem services' (or monetary benefits) that can result from land management decisions.

[redacted] but did not claim to be a "policymaker" as such. Rather, she claimed to be "responsible for implementing the Obama Administration's policies regarding sustainable rural development." [redacted] asserted that the petitioner's departure and replacement would be a tremendous setback to her research group's activities, but she did not identify any existing formulation or modification of policy that arose from the petitioner's work. The implication, instead, is that the petitioner's work will eventually influence policy decisions at some future point.

In a separately submitted letter, [redacted] states that the petitioner's scholarly work "addresses the offset potential that can make the difference between a successful marriage of resource restoration need and private enterprise creating industry, jobs and vitality while at the same time enhancing the natural resource." Like other witnesses, [redacted] tone was one of conjecture about the future. For example, he stated: "Biomass utilization can help increase treatment but industry cannot compete unless it is ancillary to another activity and in this case likely that ancillary activity will be federal treatments."

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

Counsel has repeatedly contended that the focus of the petitioner's work is on policy rather than academia, and that it is inappropriate to view the petitioner's work in academic terms. Nevertheless, the petitioner's witnesses have skewed heavily towards academia rather than the realm of policy. If the petitioner's work has affected policy, then evidence of such policies should exist, and statements from policymakers, attesting to the petitioner's influence, should also be available. It cannot suffice for the petitioner to submit statements from non-policymakers who attest, second-hand, that the petitioner has had some kind of influence on policy.

The assertion that the petitioner has earned the national interest waiver through her policy-oriented work cannot succeed without evidence that her work has, in fact, shaped policy. The claim that her work will eventually shape policy, and that she should receive the waiver now in order to carry her work to that future point, cannot prevail because it relies on speculation rather than on a record of demonstrable achievement in the realm (agricultural economic policy) through which the petitioner claims she will serve the national interest.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.